U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re	)	
	)	
Review of the Prime Time	)	MM Docket No. 94-123
Access Rule, Section 73.658(k) of the	)	DOCKET FILE COPY ORIGINAL
Commission's Rules	)	

Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Notice of Proposed Rulemaking

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Jere W. Glover, Esq.
Chief Counsel for Advocacy
Barry Pineles, Esq.
Assistant Chief Counsel
Office of Advocacy
United States Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416
(202) 205-6532

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I. *Introduction -- Television before 1970*

1. From Philo Farnsworth's invention of the television in the 1930's to the end of the 1960's, television viewership was dominated by three major networks -- CBS, NBC, and ABC. These three networks captured more than 90% of the television viewers.

2. The networks, either with their own production facilities, or through contractual agreements controlled the production of video entertainment programming. The networks were able to use their market power to control the distribution of programming after it had played on the networks.

3. The networks, either through ownership or affiliation agreements, had access to the best television stations in the largest television markets. Network owned and operated stations or network affiliates generally were located on the VHF band which produced a clearer and better over-the-air signal than UHF stations. Thus, network owned stations or network affiliates were accessible to more viewers than UHF stations which were typically independents.[1]

4. Accessibility to viewers was and is the raison d'etre of commercial television. Money is made not by the broadcasting of programs but by the sale of valuable advertising time during programs. More viewers translates directly into higher advertising revenues and greater income for television stations.

5. Network affiliates were given an even greater advantage than technical capacity to reach more viewers. Networks were able to ensure that programming taken off their prime time schedules (but still more popular than any other available programming) were provided to their affiliates. More popular programming was guaranteed to achieve higher viewership and greater potential advertising revenue.

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[1] Only in the very largest markets, New York and Los Angeles, were there a significant number of independents located on the VHF band.

6. In 1970, the Federal Communications Commission (FCC or Commission) became alarmed at the power of the networks. To increase diversity in programming, the Commission introduced two rules that were to have a profound effect on the subsequent history of television.

II. *The Fin/Syn and Prime Time Access Rules*

7. The financial interest and syndication (vernacularly known as fin/syn) rule prohibited the three major networks from syndicating programs they produced. They could, if they desired, sell that programming to independent companies which in turn would syndicate the programs.[2]

8. Enactment of the fin/syn rules dramatically reduced the incentive networks had to produce programming. Without obtaining access to the substantial profits available in syndication, networks found it cheaper to purchase programs from outside production companies rather than utilize their in-house capabilities.

9. The fin/syn rules also increased the competitive ability of independent stations to obtain popular programming for reruns. Since networks no longer controlled syndication, no incentive

[2] The Commission decided to eliminate the fin/syn rules as of November 1995. *See generally* Capital Cities/ABC v. FCC, 29 F.3d 309 (7th Cir. 1994).

existed to give network affiliates preferential treatment[3] in the purchase of such programming.

10. Enactment of the fin/syn rules had the effect of increasing the ability of independent television stations (those not affiliated with a network) to survive. Independent stations had access to more popular programming which would lead to gains in viewership and advertising revenues.

11. The Commission was not satisfied that fin/syn rules would by themselves assure the survival and growth of independent television stations. As a result, the FCC also adopted the prime time access rule (PTAR).

12. The PTAR has two aspects. First, it established a one-hour period (from 7 to 8 p.m. in the eastern and pacific time zones and 6 to 7 p.m. in the central and mountain times zones) called the access hour. Except for certain types of news and sports programs (and for any type of program on Sunday), networks were prohibited from broadcasting during that time period. Second, the PTAR prevents network affiliates in the top 50 television markets from broadcasting off-network programming (programming once shown on the networks but then sold in syndication).

[3] Preferential treatment might range anywhere from a right of first refusal to a lower price for affiliates.

13. The FCC believed that the PTAR would serve as a catalyst to the development of an independent video production community. The Commission also hoped that restrictions on network influence during the access hour would increase the diversity of programming ideas and not simply be a vehicle for the broadcast of programs previously aired on the network.

III. *Entities Affected by PTAR*

14. In 1970, there were 862 licensed television stations in the United States. As of September 30, 1994 that number had grown to 1,520 stations.[4] The increase in independent television stations is even more dramatic. There were only 82 such stations in 1970 and today there are more than 450. Of the UHF independent stations, the majority have revenue of less than $10.5 million.[5]

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[4] This number includes non-commercial television stations. While such stations are not generally considered as vehicles for showing fare normally obtained through syndication, they do provide a significant outlet for independent producers.

[5] The Small Business Administration, pursuant to the Small Business Act, is authorized to develop standards for determining whether a business should be classified as small. The standard for television broadcast stations (SIC code 4833) is $10.5 million. 59 Fed. Reg. 16,513 (April 7, 1994).

VHF stations generally have larger revenues than UHF stations and may exceed by small amounts the SBA size standard. Nevertheless, these independent VHF stations generally have significantly lower gross and net revenue than network affiliates. Thus, most of them, while strictly not small businesses by SBA standards should be considered small businesses by the Commission for the purpose of conducting analyses pursuant

(continued...)

15. There are approximately 6,200 firms in the United States involved in film and video production. The average sales for these firms is roughly $2.3 million. In 1979, only 225 firms attended the National Association of Television Programming Executives (NATPE) Convention.[6] In 1995, the number of firms attending more than doubled to 490. The majority of production and distribution companies at the NATPE convention have revenues of less than $21.5 million.[7]

16. In general, the vast number of firms affected by the PTAR, be they television stations, production firms, or distributors of entertainment programming, are small businesses. The Office of Advocacy concurs with the FCC that changes to the PTAR could have a significant impact upon a substantial number of small entities. The Office of Advocacy commends the Commission for recognizing this and preparing an initial regulatory flexibility analysis.

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[5](...continued)
to the Regulatory Flexibility Act (RFA). Section 601 of the Act contemplates the adoption of a standard different than the Small Business Administration's for purposes of complying with the RFA.

[6] The NATPE did not keep statistics on the number of exhibitors prior to 1979. The failure to keep statistics is at least in part related to the relatively low turnout of exhibitors.

[7] The SBA size standard for film and video production and distribution is $21.5 million. 59 Fed. Reg. 16,513 (April 7, 1994).

IV. *The Proposed Rule*

17. The Commission instituted the current rulemaking[8] in response to petitions from certain segments of the industry that wished to terminate the PTAR. Unlike the typical FCC rulemaking, the Commission did not reach tentative conclusions about the PTAR. Rather, the Commission's NPRM lays out an analytical framework in which to consider the public interest benefits of the PTAR.

18. The FCC requested specific comments addressing whether the PTAR should be eliminated, whether the off-network restriction in the PTAR should be eliminated or whether the status quo should be retained. The Commission also invited suggestions on alternative arrangements that might meet the public interest fostered by the PTAR but be less restrictive on the networks and their affiliates in the top 50 markets.

19. The Commission also solicited comment on the efficacy of the PTAR. In particular, the FCC asked whether the PTAR increased opportunities for independent programmers, whether it reduced the network ability to dictate affiliate programming choices, whether

[8] In Re Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, MM Docket No. 94-123, Notice of Proposed Rulemaking, (October 25, 1994), *summarized at* 59 Fed. Reg. 55,402 (November 8, 1994) (NPRM).

it enhanced the competitive capability of independent stations in the top 50 markets, and ultimately, whether the PTAR was in the public interest.

20. Incidental issues related to the retention of PTAR also were raised by the Commission in the NPRM. Specifically, the Commission requested for comments on whether the definition of a network should change and whether exemptions from the PTAR should be modified.[9]

V. *Drop in Network Viewership and Growth in Independents*

21. Prior to the implementation of PTAR, networks controlled more than 93% of the prime time audience. In 1993, that figure dropped to 61%. Even greater reductions have occurred in other parts of the day. All day network viewership has dropped to 53% of the total audience.

22. One reason for the drop in network viewership is the explosive growth of cable television. Cable television offers viewers numerous alternatives to the programming provided networks. However, only approximately 62% of the television viewers subscribe to cable and the vast majority of those viewers

[9] The FCC also requested a legal analysis on the constitutionality of the PTAR. The Office of Advocacy takes no position on the constitutionality of the PTAR.

use it to watch local television stations. Thus, other phenomena must account for the reduction in network audiences.

23. Another reason for the decrease in network viewership is the equally dramatic growth in the number of over-the-air broadcast television stations available to the viewing public, particularly in those areas in which the PTAR applies -- the top 50 television markets. Viewers in these areas now have access to major first-run syndication programming that would not have been possible had it not been for the establishment of independent television stations.[10]

24. Viewers in other television markets, not governed by the PTAR, also benefit from the PTAR. If independent stations can thrive in large metropolitan areas with a diversity of available entertainment programming, then they can be similarly successful in smaller markets as well. This creates an incentive for the development of independent television stations in smaller markets. With new television stations, viewers in these smaller markets are no longer subject to the programming whims of the three networks. The growth of independents outside the top 50

[10] Without independent television stations to purchase programming, it is unlikely that a show such as Star Trek: The Next Generation, would have been able to start its continuing mission much less complete it, take it to the silver screen, and challenge its predecessor Star Trek in cultural iconography. No one need remind the Commission Star Trek was cancelled by a network, NBC -- a decision that is likely to go down as the single worst programming mistake in the history of network television.

markets also has been a contributing factor to the decline in network viewership.

25. Finally, the Commission must recognize that technology has played a critical role in the decrease of network viewership. Most American homes are equipped with at least one videocassette recorder (VCR) which makes time-shifting (watching when convenient for the viewer not the broadcaster) possible.[11] Thus, a program recorded from the network could be watched at a later time and this would not be picked up in ratings. Secondly, owners of VCRs can rent movies when nothing is on that satisfies them.[12]

26. The success of independent television stations did not occur in a vacuum. Viewers had to have reasons to watch the independents. A symbiotic relationship grew in which the available television stations provided new outlets for a growing band of video production companies. The availability of

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[11] In the mid-1970's, television audiences would have had to stay home on Saturday night to watch three classic hours of comedy television -- MASH, All in the Family, the Bob Newhart Show, the Mary Tyler Moore Show, and the Carol Burnett Comedy Hour. Today, an individual can set their VCR (assuming they have figured out how to program them) and watch any show at a later date. As a result, Saturday has gone from being one of the most watched nights on television to one of the least.

[12] The networks have responded to the availability of VCRs by drastically reducing the number of television shows rerun, particularly during the summer. Before the advent of the VCR, it was not uncommon to see only reruns during the summer. Now networks show original programming in the summer and reruns are far less ubiquitous.

programming otherwise unavailable on the networks, yet which have a strong following, was as important to the success of independent stations as the independent stations were to the success of those shows.

VI. *The Framework for Evaluating the PTAR*

27. According to the FCC, the NPRM was undertaken to assess "the extent to which the rule serves the Commission's ... mandate to maximize consumer welfare, as opposed to protecting individual competitors in the communications industry." NPRM at ¶ 32. The Commission goes on to state that the ultimate decision will turn on the costs and benefits of associated with retaining, modifying, or eliminating the PTAR. *Id.*

28. The Office of Advocacy strongly disagrees with the Commission's polestar for guiding its analysis of the PTAR. Congress enacted the Federal Communications Act of 1934 and delegated to the FCC the authority to regulate broadcasting to protect the public interest.[13] Nothing in that standard embodies the concept of consumer welfare maximization[14] which

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[13] National Cable Television Ass'n v. United States, 415 U.S. 336 (1974); Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[14] Consumers maximize welfare when they maximize their consumer surplus. Consumer surplus represents the excess of the price the consumer would be willing to pay over the price that the consumer actually paid for a product. In a perfectly (continued...)

is almost exclusively applied to determining whether a particular practice violates the antitrust laws; and the FCC can cite no caselaw to support that proposition.

29. In fact, consumer welfare maximization is a particularly inappropriate analytical model for assessing the value of the PTAR. Under the Commission's thesis, if consumer welfare was maximized solely by viewing the entertainment programming of the three major networks, then it would be appropriate to eliminate independent television stations and convert them to network affiliates. More importantly, it would provide the impetus for the Commission to eliminate local broadcasting and require only network broadcasts. The absurdity of such a result needs no further expatiation.[15] Thus, consumer welfare maximization should not be the primary analytical model for determining whether the PTAR is in the public interest.

30. In contradistinction, the Office of Advocacy believes that no adequate assessment of the PTAR can be done without an

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[14](...continued)
competitive market, consumer surplus is maximized. Imperfections in the marketplace reduce consumer surplus.

[15] Even the Commission does not believe that argument. In Turner Broadcasting Sys v. FCC, 62 U.S.L.W. (1994), the FCC defended the must-carry rules developed in response to the enactment of the 1992 Cable Television Consumer Protection and Competition Act by arguing that the government has a compelling interest in maintaining the viability of local broadcasting. *Id.* at 4659. Nowhere in that argument did the FCC argue that must-carry rules maximize consumer welfare.

estimation of the costs and benefits of the rule, its modification, or elimination. Furthermore, the Office of Advocacy opines that this benefit-cost analysis provides the FCC with information needed to assess the PTAR in light of the requirements of the RFA.

A. Increasing Opportunities for Independent Programmers

31. The Office of Advocacy will let statistics speak for themselves. The number of companies trying to sell video programming in the local television market has more than doubled in the past 15 years. Little doubt can remain that the PTAR had its intended effect of increasing the number of independent programmers.

32. The Commission's primary assault on that statistic is that the PTAR restricts the number of potential buyers of programming after a network run thereby decreasing the ultimate return on the value of the program. Facially, this analysis has some appeal; however, closer examination reveals the inaptness of the argument.

33. The FCC repealed the fin/syn rules effective November, 1995. After that date, networks will be able to syndicate their own television shows. The removal of the PTAR, rather than enhancing the ability of large market television stations to purchase

independent programming, will give the networks an incentive to sell off-network programming they had originally produced for broadcast in prime time. Thus, the elimination of the PTAR or the off-network restriction will simply result in network affiliates being able to buy programming produced and syndicated by the networks. The Office of Advocacy does not see how enabling affiliates to purchase network syndicated programs will enhance the value of independent programming.

34. Nor should it go unstated the potential power that the networks would wield in convincing their affiliates to purchase network produced and syndicated programming. Networks might modify their affiliation agreements requiring that their affiliates purchase network syndicated programming. Or networks might increase payments to affiliates for airing of network programming as an inducement to purchase network syndicated programming. Independent producers do not have the same market access or power to entice network affiliates to purchase their programming. This may be one reason why production companies, such Time-Warner, are in the initial phases of establishing new networks -- to assure that their own product has an outlet on over-the-air television. That decision alone speaks volumes about the relative power of networks.

35. In some areas, such as New York or Los Angeles, where all the major networks also own television stations, it would be

highly improbable that these stations would not purchase the off-network syndicated programming produced by the network parent. Thus, elimination of the off-network restriction, rather than increasing programming diversity, will actually decrease programming diversity for some of the largest television markets in the United States.

36. To be sure, all that would happen, according to the Commission and proponents of removing the PTAR, is that the programming from independent producers would replace the off-network programming now on independent stations in markets subject to the PTAR. Thus, the Commission and proponents of repeal argue that the number of outlets available to purchase independent programming would not change. The analysis does not withstand close scrutiny.

37. With the PTAR restriction in place, network owned and operated stations cannot purchase off-network programming. Nothing guarantees that independent stations will purchase this programming. They may also decide to purchase independent programming. By removing the PTAR restriction, it guarantees that network syndicated programming will be shown in the access period on network owned and operated stations, thereby decreasing the diversity of programming.

38. In all the markets subject to the PTAR, network affiliates either equal or exceed the number of independents in the market.[16] If Fox affiliates are included in the measure of network affiliates, then no market exists in which independent stations equal the number of network affiliates. Removal of the PTAR's restrictions will, in all probability, severely limit the available outlets for non-network syndicated programming. Thus, the argument that the programming could simply migrate to independent stations fails.

39. The Commission also asserts that the removal of the PTAR will simply induce television stations to purchase independent programming for broadcast at other times in the day. A break down of major network schedules shows limited time slots for such programming in the 50 largest markets. Each network provides a minimum of 2 hours of soap opera programming during the day. They also provide 2 hours of early morning news programming during the day. Late night talk shows also use at least 1 hour of programming during the day. If you include local news

[16] This count excludes Spanish speaking television stations. First, most programmers in the United States are not oriented to producing Spanish speaking programming (most of which is produced in Mexico or South America). Second, most Spanish speaking television stations are themselves affiliated with one of two major networks -- Univision or Telemundo. Thus, these stations would not be prime candidates to purchase programming provided by most independent production companies.

broadcasts, which last anywhere from 30 minutes to 3 hours,[17] the available blocks for program migration are few.

40. More troubling to independent producers, many of whom sell syndication programming through barter,[18] is the lack of viewers in those portions of the day in which the stations do not have other programming commitments. Independent programmers, in all likelihood, cannot obtain sufficient revenue to succeed if they were relegated to these fringe time slots.[19] Only large entertainment conglomerates would be able to survive in this environment further reducing the available number of programming sources.

41. The Commission further asserts that the benefits of the PTAR are overstated. NPRM at ¶ 34 & n.73. The FCC argues that successful syndication requires a high number of stations to

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[17] In the largest markets, local afternoon news broadcasts usually account for at least 1 hour of programming and in some instances, such as Washington, as many as three hours of afternoon local news.

[18] In barter, television stations pay reduced syndication fees to program producers. In turn, program producers are able to retain some of the available advertising time to sell on their own behalf.

[19] Independent programmers also would have to compete with the burgeoning infomercial market. Infomercial producers make their money from the sale of the product advertised not the broadcast of a particular program and the concomitant sale of advertising time. Thus, an infomercial in a fringe time period may be extremely successful (in garnering sales sufficient to recoup the purchase of the time) while a program sold in syndication may not be able to garner sufficient viewers to successfully sell advertising time.

purchase a program. Thus, only a few shows in any given time period will succeed which will reduce the number of independent programmers fostered by the PTAR.

42. The Office of Advocacy disputes this rationale for two reasons. First, it presumes that every type of show seeking syndication needs the same number of station clearances. In fact, some programming, regionally based, may only need key large markets in the region to clear the programming.[20] Second, if the FCC's argument is true, then other programmers will be seeking to enter the market and obtain a portion of the excess profits garnered by firms that do succeed in the market. As long as no barriers to entry exist in the independent production market, firms will have incentives to "steal" the time slots and profits of production companies already in the market. Thus, the PTAR provides the incentive for firms to enter the market although it does not guarantee success of any particular production company.

43. Finally, the FCC asseverates that the wealth of cable channels provides an outlet for independent programmers. The

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[20] The assumption underlying the Commission's analysis is that all syndication is done on a national basis in which large-scale market penetration is required. While certain shows and production companies require this type of national market, many smaller producers only require moderate amounts of station clearances, albeit at times that attract reasonable audiences. Had the Commission examined the latest NATPE issue of VARIETY, it would have uncovered a very diverse syndication market.

Office of Advocacy disputes that contention for a number of reasons.

44. Cable channels often have very specific market needs; the bulk of which are met by a few select production companies. Moreover, many cable channels rely on in-house production (Showtime, USA, HBO, and the History Channel are but a few) and do not seek outside production company assistance. Many cable channels also have difficulty finding operators to accept their programming because of channel capacity problems. Most importantly, cable only reaches approximately 62% of the viewing public. If one accepts the thesis that independent producers can find markets on cable channels, the Commission, in essence, is ignoring a significant portion of the population that relies on broadcast television to obtain programming other than that provided by the networks.

45. The Office of Advocacy opines that the PTAR has done an admirable job of creating the appropriate incentives needed to foster a healthy independent programming sector. Repeal of the restriction will simply further enhance the power of networks in their battle with independent syndicators. The Office of Advocacy sees no reason to further strengthen the hand of the networks at the expense of hundreds of independent video programmers and distributors -- the majority of whom are small businesses.

B. Reducing Network Power over Affiliate Programming

46. The FCC proffers the argument that the PTAR may no longer be necessary to protect affiliates from the pressure of network programming. The Commission contends that the variety of programming sources (developed as a result of the PTAR) are such that affiliates could leave networks and still find valuable programming. Moreover, the FCC asserts that "it seems increasingly unlikely that the networks would attempt to force their affiliates to take unpopular programs or programs necessarily different from those the affiliates would choose." *Id.* at ¶ 42.

47. Theoretically, the FCC's analysis may be correct in an ideal world with relatively free entry and exit of network affiliations and access to outside programming. However, as the Supreme Court has noted, television and radio broadcasting do not exist in an ideal free market world.[21]

48. As these comments have already demonstrated, removal of the fin/syn restrictions will give networks a greater, not lesser, incentive to force their affiliates to purchase network syndicated programming irrespective of its popularity. If PTAR also is eliminated, the number of financially healthy independent

[21] Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

programming sources may not be sufficient to meet the needs of the newly unaffiliated stations.

49. The problem of programming sources for newly independent stations is compounded by the growth of additional networks.[22] Both United Paramount (UPN) and Warner Brothers (WB) have started networks which have obtained numerous affiliates. As these networks provide more programming, and they like Fox are affiliated with film and video production companies, the number of independent producers would decrease due to a lack of demand. Thus, newly unaffiliated stations would not find a robust independent video production sector. The potential unavailability of programming would substantially reduce the probability that an affiliated station would become an independent.[23]

50. The Commission also requests comments on whether the networks will use their bargaining power in ways that do not serve the public interest. *Id.* at ¶ 44. The Office of Advocacy is nonplussed by the FCC naivete in this matter. Networks are

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[22] As a general proposition, the Office of Advocacy believes that competition to the existing networks will add innovation and diversity to the programming schedule.

[23] In the fall of 1994, numerous stations changed affiliations. However, few of the changes resulted in an affiliate becoming an independent station. In fact, most of the switches were the result of some one-time extraordinary transactions by Fox, such as obtaining the rights to the NFL and the purchase of a number of television stations.

owned by stockholders and operate to the benefit of stockholders not some amorphous public interest. Any activity undertaken by a network is designed to increase the return to its shareholders. The Commission cites no evidence that the networks would operate in the public interest if it was detrimental to the interests of their stockholders.[24] Thus, the Office of Advocacy assumes that the networks will use their bargaining power with affiliates to their benefit and that may or may not serve the public interest. The question the Commission must answer is whether it is willing to take that risk given FCC's interest in ensuring the financial health and diversity of local television broadcasting. The Office of Advocacy opines that the proper response to that question should be "no."

C. Independent Television Station Financial Health

51. The Commission asserts that the PTAR provides two main benefits to independent television stations: 1) they have less competition for viewers; and 2) they have access to less expensive programming. When the FCC enacted the PTAR it recognized these competitive advantages but did so with the

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[24] For example, the networks strongly endorsed the Commission's decision to remove the prohibition against network ownership of cable systems while the changes were strongly opposed by affiliates. In the Matter of Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, MM Docket No. 82-434, Report and Order, slip op. at ¶¶ 5-7 (July 17, 1992).

realization that they would spur the development of television stations unaffiliated with the networks.

52. The growth of independent stations has been dramatic. Without the PTAR, it is unlikely that Fox, UPN, or WB could have obtained sufficient local television stations to create their own networks. Nor would numerous and successful independent shows, such as the Star Trek progeny, Baywatch, and Kung Fu,[25] have succeeded without the growth of independent television stations. There is little doubt that the PTAR has had its intended effect.

53. The Commission, however, perceives that the disadvantages of independent stations (in general their UHF location) have been allayed by their carriage on cable systems. The Office of Advocacy concurs that cable carriage eliminates the technical disadvantage of UHF stations for those customers that receive cable. However, less than two-thirds of all households subscribe to cable. Thus, for the remaining households, network affiliated VHF stations provide a stronger signal and better picture than independent UHF stations.

54. Nor can the FCC be entirely certain that cable carriage of local independent stations is assured. Must-carry requirements

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[25] The Office of Advocacy does not vouch for the quality of these shows. Aesthetic values should be left to each person because, as Dostoyevsky noted in the BROTHERS KARAMAZOV, beauty is not fathomable. *Cf.* PLATO, SYMPOSIUM (Eyes view beauty and the mind creates realities of beauty not impressions).

are the subject of ongoing litigation. If they are overturned by the courts, there is no certainty that cable operators will broadcast all or any independent stations. They may decide that it is more profitable to obtain other cable programming, particularly shopping channels in which the operator splits revenue with the shopping channel.[26]

55. Even more critical to the survival of independent stations than quality of transmission is the need for quality programming at relatively low cost. For an entire evening of programming, independent stations must spend more revenue for programming than network affiliates since networks pay their affiliates to carry network programs. The PTAR's ability to hold down the cost of quality programming in the top 50 markets is crucial to the financial health of independent stations.

56. The removal of the PTAR restrictions would affect adversely the financial health of independents. This would occur in two ways. First, since most of the stations subject to the off-network restriction are larger, have greater financial resources, and have fewer overall programming expenditures than independents, they could outbid independents for quality off-

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[26] In addition, the Commission has amended its rate regulations for cable television to provide them with greater incentives to add new cable channels. These incentives enable operators to raise rates when they otherwise are prohibited. No such incentive exists for the carriage of over-the-air broadcast signals.